checklist items, when in fact the test is whether the item is legally and practically "made available" to CLECs under interconnection agreements. See DOJ Oklahoma Evaluation, p. 23. By furnishing of poles and ducts to Brooks Fiber and others, Ameritech more than passes this test.

40. Regarding TCG's surprising assertion that it has not placed any requests for access to Ameritech's structure in Michigan (TCG Br., p. 21), Ameritech has in fact responded to three requests from TCG Detroit for access to conduit in Dearborn, Troy, and Detroit, Michigan. TCG submitted deposits with these requests asking Ameritech to do a records check on the desired conduit locations. Ameritech responded to each of these requests by verifying that the conduit was on the records and providing TCG with an estimate of what it would cost to perform a Field Survey, but has not heard anything further from TCG.

CHECKLIST ITEM (iv): UNBUNDLED LOCAL LOOPS

41. MCI asserts that use of the BFR process for loops served by integrated digital loop carrier ("IDLC") or remote switching technology creates unnecessary delay. Sanborn Aff., ¶ 34. Schedule 9.5(2.1.2) of MCI's Agreement, however, as well as the same schedule in the AT&T and Sprint Agreements, plainly states that loops served by IDLC or remote switching technology are available on a standard basis, with one exception. Where MCI orders a loop served by IDLC or remote switching technology deployed as a loop concentrator, "Ameritech shall, where available, move the requested loop(s) to a spare, existing physical loop at no charge to MCI." The only exception occurs when no spare physical loop is available, in which case

Ameritech notifies MCI of the lack of spare facilities and allows MCI to decide whether it wants to submit a BFR for Ameritech to provide the loop through demultiplexing of the integrated digitized loops. MCI Agreement, Sch. 9.5(2.1.2). This is fully consistent with ¶ 358 of the First Report and Order.

CHECKLIST ITEM (v): UNBUNDLED LOCAL TRANSPORT

A. Common Transport

42. The DOJ and Ameritech's competitors claim that common transport -- that is, undifferentiated minutes of use on Ameritech's network -- is a network element. DOJ Br., pp. 13-15; AT&T Br., pp. 9-12; MFS WorldCom Br., 20-29. They further claim that because Ameritech does not provide common transport as a UNE, it fails to satisfy the checklist requirements for local transport, ULS, and UNE combinations (e.g., the UNE platform).

43. As I will discuss, the premise for those conclusions -- that common transport service is in fact a network element -- is erroneous for a number of reasons. First, the Commission has never addressed the common transport issue, and therefore common transport cannot be deemed to be a UNE. Second, the distinctions between network elements and services drawn by the Act and regulations preclude common transport from being a network element.

1. The Common Transport Issue Has Never Been Affirmatively Decided, and Remains Pending Before the Commission.

44. The question of whether "common transport," as defined by Ameritech's competitors, is required by the Checklist or qualifies as a network element has become one of the central

Checklist issues in this proceeding. The issue is so contentious because (i) it was not addressed in the First Report and Order and has been pending before the Commission for over nine months; (ii) it lies at the core of the interrelated disputes regarding the definitions of unbundled local transport, unbundled local switching ("ULS") and the unbundled network element platform ("UNE platform")[15]; and (iii) its resolution will determine whether common transport, which is already provided as a wholesale access service by Ameritech, must instead be priced at the lower rates applicable to UNEs. This, of course, will have a dramatic effect on the price of the UNE platform and collection of access charges.

45. Ameritech, AT&T, MFS and others have repeatedly discussed the common transport issue (and the related ULS and platform issues) with the FCC in a series of more than 20 ex parte letters and presentations dating back to at least January 22, 1997. Despite the unsettled status of the issue, however, the DOJ independently has concluded that common transport is a network element. DOJ Br., pp. 13-15. With all due respect, however, it is not the DOJ's (much less the CLECs') role to determine whether common transport is a network element. That issue properly must be decided in the first instance by the Commission. Given that the issue remains undecided, it would be irrational to claim that Ameritech has not satisfied the Checklist because it does not provide something that the Commission itself has never said must be provided.

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[15] As stated in my initial affidavit (¶ 98), Ameritech will comply with the Commission's final resolution of this issue. Moreover, as described in Mr. Kocher's reply affidavit, Ameritech has committed to a billing "true-up" should the issue be resolved against it.

46. Similarly, it seems that it would be a denial of fundamental fairness for the Commission to determine Ameritech's Checklist compliance based on an issue still pending before it. Ameritech has no clear reason to believe that common transport is a Checklist requirement. Not only is the term "common transport" mentioned nowhere in the regulations, it is also mentioned only once in the 700+ pages of the Order itself (¶ 258), and even that mention occurs outside the paragraphs where the FCC specifically defines the interoffice transmission.

47. AT&T tries to assert that this issue has already been resolved in its favor by the Michigan, Illinois, and Wisconsin state commissions. AT&T Br., p. 10; Falcone/Sherry Aff. ¶¶ 20-42. The MPSC, however, has properly recognized that "the issue of shared transport remains unresolved" while the industry awaits "clearer direction" from the Commission. MPSC Br., pp. 39-40. The MPSC also correctly notes that the Commission's decision might be affected by the results of the UNE platform trial being conducted by Ameritech and AT&T. Id., p. 40.

48. In addition, the statements by the Illinois Hearing Examiner and Public Service Commission of Wisconsin in their state § 271 dockets are inconsistent with the MCI arbitration decisions in those states. In those orders, the ICC and PSCW found that the evidence did not establish that common transport was a network element required by the Act, Regulations, or First Report and Order, and therefore assigned the issue to the BFR process.[16/]

[16/] MCI/Ameritech Illinois Arbitration Decision, p. 29 [Att. 10]; MCI/Ameritech Wisconsin Arbitration Decision, p. 16 [Att. 12].

49. In light of the uncertainty on this issue at both the state and federal level, common transport cannot be considered in evaluating Ameritech's checklist compliance.[17/] Despite the manifest uncertainty of the issue, however, AT&T, MCI, and MFS WorldCom continue to argue -- as they have in numerous ex partes in CC Docket 96-98 -- that the Checklist or First Report and Order somehow require common transport to be provided as a UNE. Rather than repeat all of the arguments and responses here, I will attempt to summarize Ameritech's positions and the flaws in the commenters' arguments, but would refer the reader to the ex partes for more detail. For ease of reference, I have attached a complete set of Ameritech's ex parte submissions on the issue [Atts. 16-26].

2. "Common Transport" is Not a Network Element or a Checklist Requirement

a. The Plain Language of the Act Precludes Common Transport from Being a Network Element or the Type of Transport Required by the Checklist.

50. The plain language of the Act, when read in light of engineering reality, makes it clear that common transport cannot be the UNE required by the Checklist or FCC regulations. Checklist item (v) specifically defines the type of transport that a BOC must provide:

> (v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

17/ This is another reason not to consider common transport when evaluating Ameritech's satisfaction of the Checklist. The basic issue of how common transport should be priced. Ameritech's "true-up" proposal, explained in Mr. Kocher's affidavits, alleviates any concern that the IXCs or DOJ might have by ensuring that, if the Commission were somehow to conclude that common transport is a UNE, Ameritech's competitors will re compensated for past price differentials between the service and UNE.

Thus, the Checklist specifically requires unbundled transport to be able to be provided as a stand-alone network element, one that can be provided independently from switching. See also First Report and Order, ¶ 440 (requiring "unbundled access to shared transmission facilities between [i.e., not including] end offices and the tandem switch") (emphasis added); id., ¶ 425 (requiring incumbent LECs to provide "access to their tandem switch unbundled from interoffice facilities") If it cannot, then it cannot be the unbundled transport required by the Checklist.

51. As Ameritech's network engineer, Daniel Kocher, demonstrated before the MPSC, the "common transport" demanded by the CLECs cannot as a matter of engineering fact be provided separately (i.e., "unbundled") from switching. As he explained:

> Transport facilities are, by their very nature, dedicated transmission facilities between two points. It is the switching that allows a given transport facility to be used as "common transport" -- that is, to carry a local call one minute, a toll call the next minute, and an access call to a long distance provider the minute after that, to and from any point in Ameritech's network. The interoffice transport facility itself (i.e., the trunks) only transports the digital bits, the ones and zeros, between the two specific switches.

4/7/97 Affidavit of Daniel J. Kocher, p. 19, Michigan § 271 Compliance Docket (emphasis added) (Ameritech May 21, 1997 submission, Vol. 4.1, Tab 116).

52. In addition, common transport traffic can only be completed using routing tables which are proprietary to Ameritech and which are not an inherent feature of either the switch or the transport capabilities in the network. Ameritech 5/9/97 ex parte, pp. 6-7 [Att. 24]; Ameritech 6/23/97 ex parte, pp. 26-27 [Att. 26]. The switch and switching software provided by switch vendors do not provide routing instructions. Rather, they provide the capability of acting on

routing instructions that are programmed by the operator of the switch. Ameritech's network engineers, for example, design its proprietary routing instructions. Nevertheless, Ameritech makes the same switch capability available to CLECs as part of its ULS, allowing CLECs to have their network engineers program their own routing tables into the switch. Alternatively, the CLEC can avoid the cost of creating its own routing tables by purchasing service from Ameritech for resale.

53. Ameritech's competitors concede that the common transport they demand cannot be unbundled from switching as required by the Checklist. Falcone/Sherry Aff., ¶ 12 (common transport "is routed dynamically through the tandem switch"); id., ¶ 59 ("[D]ynamic routing [an essential element of common transport as defined by the IXCs] is accomplished through the unbundled local switch."); Ameritech 6/6/97 ex parte, p. 1 (common transport "is a blended, direct-trunked and tandem-trunked arrangement with tandem switching included.") (emphasis added) (quoting AT&T letter from Bill Davis to Ameritech dated May 14, 1997) [Att. 25]; Bingaman Aff., Ex. 11, pp. 1-2 (with common transport, "[l]ocal calls to or from LCI's local customers would be routed . . . pursuant to the existing routing instructions in the switch."); MFS WorldCom Br., p. 21 (common transport would give CLECs "the ability to employ the existing routing instructions resident in each end office switch to route traffic over the common transport network"). Because common transport cannot be unbundled from switching and, in fact, must be combined with switching in a service-type arrangement for unlimited use of Ameritech's ubiquitous network, it cannot, by definition, be the type of unbundled transport required by the Checklist or regulations.

54. The Act's definition of "network element" also supports Ameritech's conclusion. The Act (§ 3(45)) defines a "network element" as:

> [A] facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(Emphasis added). As is clear from this definition, a "network element" always involves a discrete "facility or equipment." The Commission appears to agree with this reading. See First Report and Order, ¶ 678 ("the network elements, as we have defined them, largely correspond to distinct network facilities"); Universal Service Order, FCC Report 97-157, CC Docket 96-45, ¶¶ 150-51 (May 8, 1997) (defining "facility" as "physical components of the telecommunications network"). Common transport, however, which must be combined with switching and encompasses Ameritech's entire network, cannot be provided through discrete facilities. Indeed, in demanding common transport the CLECs confuse the unrestricted use of the ubiquitous switched network with the purchase of a distinct network element.

55. The definition of network element also is limited to those facilities or equipment that are "used in the provision of a telecommunications service." (Emphasis added). Common transport, by contrast, is not "used in" the provision of a service -- it is a service all by itself, as I explain below.

b. The Act's Distinctions Between UNEs and Resale Services Make It Clear That Common Transport Cannot Be a Network Element.

56. In addition to the plain language of the Act, the structure of the Act and regulations further demonstrates that common transport is not a network element. The Act and regulations draw a sharp distinction between UNEs and wholesale services, and common transport has none of the core attributes of a UNE.

57. First, as noted above, UNEs are discrete, identifiable facilities or equipment. See 47 U.S.C. § 153(45). Common transport, by contrast, is unrestricted use of the entire public switched network.

58. Second, UNEs entitle a CLEC to fully control a facility and compete by offering innovative products or services using that facility. See 47 C.F.R. §§ 51.307, 51.309; First Report and Order, ¶¶ 292, 297. The competitors seeking common transport, however, have no plans for innovative network design or configuration, but simply plan to purchase and resell the end-to-end service. As Ameritech explained in its June 23, 1997 ex parte, p. 30 [Att. 26], "AT&T has not identified -- and cannot identify -- a single new service that it can provide under 'common transport.' . . . AT&T or any other carrier purchasing [Ameritech's] Shared Transport consistent with the definition of that Network Element in the Act and FCC Rules, could provide different quality levels and types of service using Shared Transport."

59. Third, UNEs expose the purchaser to business risk; if the facility is underutilized, the CLEC still owes the same amount to Ameritech. See First Report and Order, ¶¶ 332, 334. The Commission specifically distinguished unbundled elements from services in terms of the relative risk involved in purchasing each:

> If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks . . . [such as] the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. . . . A carrier that resells an incumbent LEC's services does not face the same risk.

Id., ¶ 334.

60. Common transport, by contrast, involves no designated facilities and would be billed based on minutes of use, placing the purchasing CLEC in the exact same position as a reseller, i.e., it only pays for the amount of service it uses.

61. Fourth, unbundled interoffice transport must be provided in a manner that allows all carriers to connect to collocated equipment. 47 C.F.R. § 51.319(d)(2)(iii). Because there is no physical demarcation point to common transport that would allow such connection, however, it cannot be the sort of shared interoffice transport required by the Act and regulations. In addition, the FCC's regulations require that Ameritech provide access to the Shared Interoffice Transport Network Element to permit Ameritech to segregate carrier-specific traffic over that element and deliver it to a carrier's collocation space in an Ameritech Central Office. AT&T admits that, under its proposal, this cannot be done. Ameritech 6/23/97 ex parte, p. 26 [Att. 26].

62. Finally, the clearest proof that common transport is not a network element is that it is identical to tariffed wholesale and access usage services already being provided by Ameritech at wholesale rates. Common transport would use the precise same routing, trunk ports, trunks, and tandem switching that is used to provide local and toll usage and switched access service. As I noted in my initial affidavit (¶ 93), these services are being used regularly by competitors. Thus, contrary to the DOJ's and CLECs' claims, Ameritech is in fact providing common transport at this time, but as what it is -- a service. Similarly, Ameritech is providing the UNE platform in the form of a package containing the unbundled loop, unbundled local switching, and wholesale usage.

63. The CLECs' descriptions of common transport confirm that their aim is to obtain existing wholesale usage at network element rates. For example, MFS WorldCom, for example, which started the common transport dispute, stated in its September 30, 1996 Petition for Clarification in CC Docket 96-98, pp. 1-2, that it was "not clear" whether the Commission's regulations required incumbent LECs to provide "tandem-switched transport on a network element basis" and requested that the Commission order incumbent LECs to provide "tandem-switched transport as single, combined network element." (Emphasis added). See also Sanborn Aff., ¶ 37 ("With true common transport, as it is used in switched access service, carriers hand off their traffic at the tandem and receiving call terminating functionality throughout Ameritech's network on a call-by-call basis.") (emphasis added).

64. "Tandem-switched transport," however, is an existing, well-defined access service. See 47 C.F.R. § 69.111; Access Charge Reform First Report and Order, CC Docket 96-262, ¶ 158 (May 16, 1997). AT&T, for its part, acknowledges that common transport is a service when it demands that a customer being served by the UNE platform should, unlike other UNE purchasers, be migrated to AT&T using the exact same procedures as a resale customer. Ameritech 6/23/97 ex parte, p. 31 [Att. 26]. If common transport is a service, however, it cannot at the same time be a network element.

c. Proponents of Common Transport are Attempting to Create a Regulatory Loophole in the UNE/Service Distinction.

65. The distinction between UNEs and resale services has significant regulatory consequences, which is precisely why Ameritech's competitors want to shoehorn common transport into the UNE category. Specifically, the most important regulatory distinctions are that (1) UNEs have more favorable pricing than resale services (cost-based prices versus discounts from retail rates, compare 47 U.S.C. § 252(d)(1) and (d)(3)); (2) a CLEC using UNEs may collect access charges in some cases, while access charges for resale services belong to the incumbent LEC (see 47 C.F.R. § 51.515); and (3) large IXCs cannot jointly market interLATA service with resold telephone exchange service from a BOC, but they can jointly market with their UNE-based local service. 47 U.S.C. § 272(e)(1).

66. The IXCs want to game this system to take advantage of the pricing, access charge, and joint marketing benefits of UNEs without also facing any of the concomitant business risks and engineering responsibilities associated with UNEs. Allowing this subterfuge, however, would

completely undermine the UNE/resale pricing paradigm established in the Act and, consequently, cause dramatic, unanticipated revenue shifts. This would deal a crushing blow to local competition. For example, requiring common transport service to be provided at UNE prices would reduce the incentive for CLECs to construct independent facilities.

3. The DOJ's and CLECs' Remaining Claims Are Baseless

67. Although the above discussion refutes most of the claims of the DOJ and CLECs, some require specific discussion.

a. DOJ

68. The DOJ's primary argument on common transport (pp. 14-15) is that because (i) Ameritech is required to combine network elements under Section 251(c)(3), and (ii) "common transport" is used in conjunction with network elements such as local and tandem switching, "common transport" must itself be a network element. Rebundling, however, does not magically transform a service into a network element. While Section 251(c)(3) does require Ameritech to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements," each network element that is to be combined must, by definition, be capable of being provided on an unbundled basis in the first instance. As defined by Ameritech's competitors, however, "common transport" cannot function without tandem switching. Consequently, "common transport" cannot be provided on an unbundled, stand-alone basis and cannot qualify as a network element.

b. AT&T

69. AT&T launches the most aggressive attack on the common transport issue,[18/] but still fails to prove that common transport can be viewed as a network element or the type of transport required by the Checklist. At the outset, it is important to note what AT&T does not challenge. First, AT&T, like the DOJ, does not argue that common transport can, in fact, be unbundled from switching. Second, AT&T does not alleges that common transport service is a discrete network facility rather than unrestricted use of the entire network. Third, AT&T does not dispute that Ameritech is in fact already providing common transport service on a wholesale basis.

70. AT&T begins by claiming that "shared" and "common" transport are synonymous and interchangeable in industry usage. AT&T Falcone/Sherry Aff., ¶ 10. As Ameritech's January 28, 1997 ex parte submission noted, however, common transport is a loosely-used term in the industry and is generally employed to conceptually refer to basic network connectivity. [Att. 17, p. 4]. Further, the term "common transport" is officially used by the Commission to define an access service rate element under 47 C.F.R. § 69.111, which describes "Tandem Switched Transport," a service.

71. AT&T also asserts that Ameritech does not truly offer "shared" transport. AT&T Br., p. 11; DOJ Br., p. 13. The AT&T Agreement, however, clearly provides for "shared

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18/ MFS also addresses the issue at length (pp. 20-29), but largely makes the same arguments as Falcone and Sherry.

transport," unbundled from switching and other services as required by the Checklist, in Schedule 9.2.4. Moreover, Ameritech has gone beyond its legal obligations and accommodated AT&T by developing a minutes-of-use pricing option for shared transport.[19/] Edwards Aff., ¶ 101-02.

72. AT&T next alleges that other RBOCs have agreed to offer common transport as an unbundled network element. AT&T Falcone/Sherry Aff., ¶¶ 14-18. Notably absent from the Falcone/Sherry affidavit, however, is any mention of those RBOCs' rate structures or carrier access and usage structures, which makes comparison to Ameritech's various transport products difficult. As a result, AT&T may be misrepresenting what those RBOCs have actually agreed to provide. In addition, it is not clear that those RBOCs have thought through the technical aspects of the issue to the same extent as Ameritech. Bell Atlantic, for example, allegedly promises common transport that is "distinct and separate from local switching." Falcone/Sherry Aff., ¶ 15. Just how that would occur as a practical matter, or how it would be priced and billed, are not discussed by AT&T, even though Ameritech has pointed out the technical barriers to such an arrangement in both the Michigan and Illinois § 271 compliance dockets.

73. AT&T then proceeds to reiterate arguments thoroughly addressed in the ex parte process, specifically that by not providing common transport service as a network element, Ameritech

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[19/] AT&T asserts that the Commission's use of minute-of-use pricing for interoffice transport proxy rates indicated that it contemplated common transport as a UNE. Falcone/Sherry Aff., ¶ 9. In discussing its proxy pricing for shared transmission facilities, however, the FCC made it clear that it did not include any rates for "tandem switching." See First Report and Order, ¶ 823.

would somehow force competing carriers to construct an entire duplicate transport network or would lead to overloading of Ameritech's tandem switches. AT&T Falcone/Sherry Aff., ¶¶ 43-49. As I explained in my initial affidavit (¶¶ 103-104), these claims are based on flawed assumptions about how rational CLECs will engineer their networks. Further, the availability of Ameritech's Shared Company Transport service also makes these alleged problems much less likely to occur.

74. Falcone and Sherry next contend that common transport must be a network element because, if it were only a service, Ameritech would not be required to offer it for resale. Falcone/Sherry Aff., ¶¶ 50-51. The fact, however, is that common transport service is currently provided via Ameritech's access tariffs, and an access tariff is by definition a wholesale tariff. Falcone and Sherry also overlook the fact that the MPSC and/or FCC would certainly monitor any attempt by Ameritech to withdraw a service that was truly necessary to competition.

75. AT&T also claims that a UNE may encompass multiple facilities, and therefore common transport's inextricable tie to switching elements is unimportant. As an example, they refer to the signaling UNE, which they allege cannot be separated from the local switching UNE even though both are separate network elements. Falcone/Sherry Aff., ¶ 56; see also MFS WorldCom Br., p. 22. This argument is both wrong and irrelevant. First, even if it were true, Congress has distinguished local transport from signaling by specifically requiring transport to be unbundled from switching, while no such requirement applies to signaling. Compare 47 U.S.C. § 271(c)(2)(B)(v) with (B)(x). Second, in the case of signaling and switching there are

discrete, defined interfaces at which either element can be combined with other UNEs or with elements provided by a third party. Common transport allows no such interface to connect to CLEC or third party facilities; it is strictly a service available in conjunction with Ameritech's loops and ULS. Third, despite AT&T's assertions, CLECs are obtaining signaling from Ameritech today even though none has purchased ULS. Edwards Aff., ¶ 152.

76. AT&T also claims that common transport service is somehow different when provided as a network element rather than a service. Falcone/Sherry Aff., ¶¶ 60-63. Their discussion, however, consists of nothing more than a comparison of the features of UNEs and services; there is no attempt to answer the threshold question of whether common transport could ever be viewed as a network element in the first place. Moreover, the definition of a network element cannot change depending on whether it is provided on a stand-alone basis or as part of a combination. As noted above, rebundling does not transform a service into a network element.

77. For good measure, AT&T reiterates its incessant allegations that Ameritech somehow misled it regarding its position on dedicated/shared versus common transport. Falcone/Sherry Aff., ¶¶ 20-34 & Exhibit A. AT&T apparently feels compelled to discuss this at length in hopes of excusing its failure to raise it as a matter for arbitration in any state, as was its sole responsibility. See 47 U.S.C. § 252(b)(2). Mr. Edward Wynn, who was personally involved in the negotiations and arbitrations with AT&T, reveals the flaws and omissions in AT&T's version of events in his affidavit. The short answer is that AT&T voluntarily agreed to Ameritech's definitions of shared and dedicated transport in both Michigan and Illinois after

corrections to those definitions had been bold-text highlighted in negotiation drafts of the agreement.

c. MFS WorldCom

78. Like the DOJ and AT&T, MFS rests its arguments on the erroneous assumption that common transport is somehow a network element. MFS WorldCom Br., pp. 20-29. MFS does, however, go on at some length about the alleged dire consequences of not treating common transport as a network element. Id., p. 28. Some of these I have responded to already, such as the claim that the lack of common transport would require CLECs to build duplicate networks and would deny affordable transport to low-volume competitors (MFS WorldCom Br., p. 28), in my discussion of Shared Company Transport. Edwards Aff., ¶¶ 100-103. Other claims, such as that CLECs will be forced to pay for customized routing in every switch, may exhaust customized routing capacity, must make separate arrangements with each IXC, and will be denied the efficiencies of Ameritech's network (MFS WorldCom Br., p. 29) all boil down to a complaint about price. MFS simply wants transport to be cheaper and easier than the Act and regulations require.

4. Ameritech's Transport Offerings Allow for Substantial Competition

79. In contrast to common transport, Ameritech's dedicated and shared transport elements and its offering of a platform including common transport provide ample opportunity for competitive entry and pricing along all three entry paths, as I described in my initial affidavit (¶¶ 99-104). For example, as Ameritech demonstrated in its March 28, 1997 ex parte, a CLEC

using Ameritech's offerings could save up to 50 percent off of Ameritech's retail rates. [Att. 22].

B. Miscellaneous Transport Claims

80. As for unbundled transport issues not related to common transport, MCI asserts that "competitors have indeed attempted to order [unbundled local transport], but have not succeeded." MCI Br., p. 27. That is incorrect. As I specifically stated in my initial affidavit (¶ 93), "[t]o date, no carrier has specifically ordered unbundled shared or dedicated transport under an interconnection agreement." That is still the case today.

81. TCG makes a similarly unfounded claim that it is "unaware of the availability of Ameritech's OC-3, OC-12, and OC-48 Services on an unbundled basis" and "unaware or any unbundled offering of interoffice transmission facilities that has been made available to TCG." Pelletier Aff., ¶ 27. In fact, OC-3, OC-12, and OC-48 facilities, as well as other shared and dedicated interoffice transport facilities, are plainly provided for on an unbundled basis in the AT&T and Sprint Agreements (Sch. 9.2.4), to which TCG has access through its MFN clause. The Illinois Hearing Examiner found this to be a perfectly acceptable way of satisfying the local transport requirement of the Checklist. Illinois 6/20/97 HEPO, pp. 71-72. [Att. 4].

CHECKLIST ITEM (vi): UNBUNDLED LOCAL SWITCHING

82. Ameritech's contractual offering of unbundled local switching ("ULS") is fully described in my initial affidavit (¶¶ 106-116). The underlying issue in the debate over ULS (aside from

pricing disputes) really boils down to the common transport question, as that effects how the ULS product is defined, priced, and provided and how access charges are recovered. Thus, from a product definition standpoint, the outcome of the common transport issue should also resolve most of the ULS issues. Mr. Kocher, who has been overseeing ULS testing with AT&T and MCI, describes Ameritech's current ability to provide ULS either with or without common transport.

CHECKLIST ITEM (vii): 911/OS/DA

A. 911

83. Some commenters have raised issues regarding 911 trunking or the quality of Ameritech's 911 database. These claims are rebutted in Mr. Mayer's and Mr. Jenkins's reply affidavits.

B. DA Database and Listings of Other Carriers' Customers

84. MCI asserts that it should not be required to use the BFR process to obtain unbundled electronic access to Ameritech's directory assistance ("DA") database. MCI Br., p. 31; Sanborn Aff., ¶ 30. At the outset, I should note that MCI does not allege that such access has been refused or is not available, but rather focuses on the ordering process. Thus, there is no claim that Ameritech fails to provide access to its DA database and therefore no Checklist compliance issue. The lone dispute is whether Ameritech should be required to offer electronic access to its DA database on a standard basis.

85. The answer, as set forth in Ameritech's approved interconnection agreements with MCI and others is clearly no. Schedule 9.2.7(1.4) and (2.4) and Schedule 9.5(8.10) of the MCI, AT&T, and Sprint Agreements specifically state that Ameritech will provide unbundled access to its DA database through an electronic interface to allow the CLEC to provide its own DA, and that such access will be established through the BFR process. This is necessary because, until Ameritech receives an order for such access (and until now no CLEC had indicated interest in it), Ameritech has no idea what specific type of electronic access may be requested, through which interfaces, in which formats, to which databases, etc. In short, this will be a new or custom offering that can best be defined, designed, and priced through the BFR process. In these circumstances, it would make no sense for Ameritech to design a standard product.

86. MCI next contends that Ameritech fails to satisfy the Commission's regulations because it does not provide access to DA listings of other carriers' customers. MCI Br., pp. 31-32; Sanborn Aff., ¶ 29. MCI's claim, however, is not supported by any reference or citation (e.g., a letter, a name) to indicate who at Ameritech allegedly denied MCI access to DA listings of other carriers. Nor am I aware of any such denial by Ameritech. As the MCI Agreement states:

> Specifically, upon request, Ameritech will provide, through an electronic interface, unbundled access to its DA database to permit MCIm to . . . read the DA listing (with the exception of a non-published listing) in that database for the purpose of providing its own DA service.

MCI Agreement, Sch. 9.5(8.12) (emphasis added).

CHECKLIST ITEM (x): SIGNALING AND CALL-RELATED DATABASES

87. TCG claims that it "is not currently obtaining access to signaling and call-related databases from Ameritech." TCG Br., p. 19. As Ameritech explained to the MPSC, TCG obtains access to Ameritech's signaling networks and call-related databases through Illuminet, an SS7 hub provider, and access to Ameritech's line information database ("LIDB") through a DOD trunk to Ameritech's Southfield central office. MPSC Br., pp. 47-48; Ameritech Michigan's Submission of Additional Information, pp. 23-24, Michigan § 271 Compliance Docket (March 27, 1997) (Ameritech May 21, 1997 submission, Vol. 4.1, Tab 110). The MPSC has accepted Ameritech's explanation and concluded that Ameritech satisfies this Checklist item. MPSC Br., p. 47.

CHECKLIST ITEM (xi): NUMBER PORTABILITY

A. Route Indexing - Portability Hub Method

88. Few commenters take issue with Ameritech's provision of number portability, and those that do raise issues that either have already been settled or are not relevant to the Checklist.

89. AT&T is the most vocal commenter on interim number portability, spending an entire affidavit arguing that Ameritech is required to offer route indexing-portability hub ("RI-PH") in addition to the three methods of number portability already included in its interconnection agreements. AT&T Br., pp. 29-32; Evans Aff., passim. (No other party even addresses the

90. What AT&T and Ms. Evans fail to disclose, however, is that this very same issue was arbitrated with Ameritech in all five states and that four of those states -- including Michigan -- found that RI-PH was not required to satisfy § 251(b)(2).[20] The Michigan arbitration panel explained its reasoning nicely:

> Route Indexing is at best, a medium-term number portability solution for which further development is unwarranted given the industry-wide emphasis on developing long-term solutions in the near future. The focus now should be on developing long-term solutions. Therefore, Ameritech should not be required to divert its resources for another interim solution that will soon be obsolete. . . .
>
> The FCC has stated that the increased costs associated with the medium-term number portability solutions are unwarranted given the imminent implementation of a long-term solution (June 27, 1996 Order in CC Docket 95-116, ¶ 116). The Panel finds that the outstanding interim number portability issues are rendered irrelevant by AT&T's proposed second quarter, 1998 interconnection with Ameritech. According to the FCC's ordered schedule, long-term number portability will begin to be offered in Michigan no later than the first quarter, 1998. Therefore, the interconnection activation date will not occur until after long-term number portability will be available to AT&T.
>
> The Panel is of the opinion that Ameritech should not have to incur the cost for the short time Route Indexing would be used. The FCC recognized that the capability to provide RCF and DID interim number portability arrangements already exists in most of today's networks and no additional upgrades are necessary.[21]

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[20] AT&T/Ameritech Michigan Decision of Arbitration Panel, M.P.S.C. Case Nos. U-11151/52, p. 47 (adopted in final arbitration decision, p. 4) [Att. 27]; AT&T/Ameritech Illinois Arbitration Decision, I.C.C. Docket Nos. 96 AB-003/004, pp. 25-26 (Nov. 26, 1996) [Att. 28]; AT&T/Ameritech Ohio Arbitration Decision, P.U.C.O. Case No. 96-752-TP-ARB, p. 24 (Dec. 5, 1996) [Att. 29]; AT&T/Ameritech Wisconsin Arbitration Decision, P.S.C.W. Docket Nos. 265-MA-101 & 6720-MA-103, pp. 45-46, 111 (Nov. 26, 1996) [Att. 30].

[21] MCI/Ameritech Michigan Decision of Arbitration Panel, pp. 47-48 (adopted in final arbitration decision, p. 4) [Att. 9]. Contrary to AT&T's claim, then, the MPSC did not "relegate[] [RI-PH] to the BFR process" (AT&T Br., p. 30), but rather declined to mandate it in any way.

91. Nor has the FCC supported AT&T's claims. AT&T cites In the Matter of Telephone Number Portability, CC Docket 95-116 (July 2, 1996) ("Number Portability Order") as support for its position. AT&T Br., p. 30. What AT&T deftly ignores is that, in the very paragraph it relies on, the FCC found that RCF and DID -- the methods currently provided by Ameritech -- fulfill the requirements of Section 251: "[S]ome may argue that the use of RCF and DID methods for providing number portability would not satisfy the requirements of sections 3(3) and 251(b)(2). We disagree." Number Portability Order, ¶ 110. Consequently, RI-PH cannot be viewed as a Checklist requirement.[22/]

92. Ameritech's legal and factual position on the RI-PH issue has been thoroughly developed in the state arbitrations and need not be fully restated here. In brief, Ameritech has demonstrated, and state commissions have agreed, that RI-PH is not required by the Act, the First Report and Order, or the FCC's Number Portability Order. Moreover, RI-PH is at best a medium-term solution that would require substantial resources to fully develop for no practical gain. In this regard, Ameritech strongly disagrees with AT&T's claims that RI-PH is essential to serve medium and large business customers, and believes that RCF and DID port numbers for such customers as well or better than RI-PH. Ameritech does not believe it would be good

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[22/] Despite the rejection of RI-PH at the federal and state level, AT&T submitted a BFR requesting that Ameritech develop BFR capability in multiple states. Ameritech has declined to process this BFR because RI-PH is not required by the Act, the Commission's rules, or the Number Portability Order and because, as the MPSC and others have found, it would be against the interests of the industry and new entrants in general to force Ameritech to divert resources from developing long-term number portability solutions simply to develop a medium-term solution that would soon become obsolete. See Number Portability Order, ¶ 105 ("[New entrants] generally caution that the use of interim solutions should not delay implementation of a permanent solution.")

policy -- or in compliance with the Act -- to require it to devote substantial resources to developing a medium-term portability method that will become useless once long-term number portability ("LNP") comes to Detroit, Ann Arbor and Grand Rapids in 1998. The basis for Ameritech's position, and a rebuttal to the arguments repeated by AT&T since at least August of 1996, is more fully set forth in Attachment 31, which includes the relevant portions of the testimony of Ameritech's Gregory Dunny in the AT&T/Ameritech arbitration in Michigan. Mr. Dunny's statements are just as relevant today.

93. The same network efficiencies that AT&T claims exist with RI-PH (Evans Aff., ¶¶ 28-46) also exist with RCF. In addition, the efficiencies that Ms. Evans alleges to exist, which are common to both RI-PH and RCF, are realized only when the number portability traffic is fractionalized and scattered. If AT&T is seeking to attract major business customers, the DID trunking form of interim number portability is probably the most efficient.

94. In addition, RI-PH could not be easily implemented by Ameritech. The technique is onerous in that it requires extensive translations by highly skilled technicians in both the sending end office and the receiving tandem office to make it work. In addition, none of Ameritech's provisioning or billing systems have been modified to support such a product. Given the short period of time before long term number portability becomes available, adding an additional and costly interim number portability option at this late date would not be cost effective.